

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Case No. 03-37864-GFK

Chapter 13

Thomas M. Heber and Jacqueline M. Heber

**NOTICE OF HEARING AND  
MOTION FOR RELIEF FROM  
STAY**

Debtor(s).

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TO: Debtor(s) and Attorney for Debtor(s); Chapter 13 Trustee; U.S. Trustee; and other parties in interest.

Principal Residential Mortgage, Inc., and Mortgage Electronic Registration Systems Inc., (“Principal”) a secured creditor of Debtor(s), by its undersigned attorney, moves the Court for the relief requested below, and gives notice of hearing herewith.

1. The Court will hold a hearing on this motion at 10:30 a.m. on September 20, 2004, before the Honorable Gregory F. Kishel in Courtroom No. 228B, United States Courthouse, 316 North Robert Street, St. Paul, Minnesota, 55101 or as soon thereafter as counsel can be heard.

2. Any objection to the relief requested herein must be filed and delivered not later than September 15, 2004, which is three (3) days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or filed and served by mail not later than September 9, 2004, which is seven (7) days before the time set for the hearing (excluding Saturdays, Sundays and holidays). **UNLESS A WRITTEN RESPONSE IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

3. This motion is filed pursuant to Rule 4001 of the Federal Rules of Bankruptcy Procedure and Principal seeks relief from the automatic stay of 11 U.S.C. §§ 362 with respect to certain real property owned by Debtor(s).

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 1334 and 157(a), Fed.R.Bankr.P. 5005, 11 U.S.C. §362(d), Local Rule 1070-1 and applicable rules. This is a core proceeding. The petition commencing this Chapter 13 case was filed on November 19, 2003, and the case is now pending in this Court.

5. By mortgage dated July 31, 1998, in the original principal amount of \$94,860.00 (the “Mortgage”), Principal acquired a mortgagee’s interest in the real property (the “Property”):

The easterly 20 feet of Lot 18, and all of Lot 19, of Birchwood Village Addition, City of Red Wing, Goodhue County, State of Minnesota, according to the plat thereof on file and of record in the office of the County Recorder for said Goodhue and State.

Address: 1503 West Maple Street, Red Wing, Minnesota, 55066

The Mortgage was filed in the offices of such County. A copy of the Mortgage is attached hereto as Exhibit A.

6. Presently, there is a post-petition delinquency under the terms of the note secured by the Mortgage with respect to monthly payments due for the months of July 2004, through Augusts 2004, in a total amount exceeding \$1,758.74 plus continuing late charges, interest and attorneys’ cost and fees. The outstanding balance due Principal under the terms of the note is \$89,402.45, plus interest, late fees and attorneys’ costs and fees.

7. The failure of Debtor(s) to make payments to Principal when due, or otherwise provide Principal with adequate protection of its interest in the Property constitutes cause, within the meaning of 11 U.S.C. § 362(d) (1), entitling Principal to relief from the automatic stay.

8. If testimony is necessary as to any facts relevant to this motion Lindsey Schiltz will testify on behalf of Principal.

9. THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

WHEREFORE, Principal respectfully moves the Court for an order modifying the automatic stay of 11 U.S.C. §§ 362 so as to permit Principal to foreclose the Mortgage on the Property and for such other relief as may be just and equitable.

Dated: September 1, 2004

MACKALL, CROUNSE & MOORE, PLC

By/e/Andrew P. Moratzka  
Andrew P. Moratzka  
Attorney No. 0322131  
Attorneys for Movant  
1400 AT&T Tower  
Minneapolis, MN 55402  
Ph. (612) 305-1400

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**NOTICE: THIS LOAN IS NOT ASSUMABLE WITHOUT THE  
APPROVAL OF THE DEPARTMENT OF VETERANS  
AFFAIRS OR ITS AUTHORIZED AGENT.  
MORTGAGE**

THIS MORTGAGE ("Security Instrument") is given on July 31, 1998. The mortgagor is Thomas M. Heber and Jacqueline M. Heber, husband and wife

whose address is 1033 Cottonwood Lot #58  
Red Wing, MN 55066

("Borrower").

This Security Instrument is given to  
Home Town Mortgage, Inc  
which is organized and existing under the laws of Minnesota  
address is 207 Chestnut Street, Suite 210  
Chaska, MN 55318

, and whose

("Lender").

Borrower owes Lender the principal sum of

Ninety Four Thousand Eight Hundred Sixty DOLLARS and Zero Dollars (U.S. \$94,860.00). This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on August 1, 2028. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to the Lender, with the power of sale, the following described property located in Goodhue County, Minnesota:

The easterly 20 feet of Lot 18, and all of Lot 19, of Birchwood Village Addition, City of Red Wing, Goodhue County, State of Minnesota, according to the plat thereof on file and of record in the office of the County Recorder for said Goodhue and State.

MINNESOTA - Single Family - V.A. Security Instrument  
Form 2824 1/98  
Lender Form Inc. (RCA) 448-2988  
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which has the address of 1503 West Maple Street  
 (Street)  
 Minnesota 55066 ("Property Address");  
 (Zip Code)

Red Wing  
 (City)

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property".

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

#### UNIFORM COVENANTS

Borrower and Lender covenant and agree as follows:  
 1. **Payment of Principal and Interest; Late Charges and Prepayment.** Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any prepayment and late charges due under the Note. Privilege is reserved to prepay at any time, without premium or fee, the entire indebtedness or any part thereof not less than the amount of one installment or one hundred dollars (\$100.00), whichever is less. Prepayment in full shall be credited on the date received. Partial prepayment, other than on an installment due date, need not be credited until the next following installment due date or thirty days after such prepayment, whichever is earlier.

2. **Funds for Taxes and Insurance.** Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender on the day monthly payments are due under the Note, until the Note is paid in full, a sum ("Funds") for: (a) yearly taxes and assessments which may attach prior to this Security Instrument as a lien on the Property; (b) yearly leasehold payments or ground rents on the Property, if any; (c) yearly hazard or property insurance premiums; (d) yearly flood insurance premiums, if any; (e) yearly mortgage insurance premiums, if any; and (f) any sums payable by Borrower to Lender, in accordance with the provisions of paragraph 8, in lieu of the payment of mortgage insurance premiums. These items are called "Escrow Items". Lender may, at any time, collect and hold Funds in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may require for Borrower's escrow account under the federal Real Estate Settlement Procedures Act of 1974 as amended from time to time, 12 U.S.C. §2601 et seq. ("RESPA"), unless another law that applies to the Funds sets a lesser amount. If so, Lender may, at any time, collect and hold Funds in an amount not to exceed the lesser amount. Lender may estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with applicable law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentally, or entity (including Lender, if Lender is such an institution) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items. Lender may not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. However, Lender may require Borrower to pay a one-time charge for an independent real estate tax reporting service used by Lender in connection with this loan, unless applicable law provides otherwise. Unless an agreement is made or applicable law requires interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender may agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds, showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for all sums secured by this Security Instrument.

If the Funds held by Lender exceed the amounts permitted to be held by applicable law, Lender shall account to Borrower for the excess Funds in accordance with the requirements of applicable law. If the amount of the Funds held by Lender at any time is not sufficient to pay the Escrow Items when due, Lender may so notify Borrower in writing, and, in such case Borrower shall pay to Lender the amount necessary to make up the deficiency. Borrower shall make up the deficiency in no more than twelve monthly payments, at Lender's sole discretion.

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Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender. If, under paragraph 22, Lender shall acquire or sell the Property, Lender, prior to the acquisition or sale of the Property, shall apply any Funds held by Lender at the time of acquisition or sale as a credit against the sums secured by this Security Instrument.

3. **Application of Payments.** Unless applicable law provides otherwise, all payments received by Lender under paragraphs 1 and 2 shall be applied: first, to any prepayment charges due under the Note; second, to amounts payable under paragraph 2; third, to interest due; fourth, to principal due; and last, to any late charges due under the Note.

4. **Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Security Instrument, and leasehold payments or ground rent, if any. Borrower shall pay these obligations in the manner provided in paragraph 2, or if not paid in that manner, Borrower shall pay them on time directly to the person owed payment. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this paragraph. If Borrower makes these payments directly, Borrower shall promptly furnish to Lender receipts evidencing the payments.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

5. **Hazard or Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage" and any other hazards, including floods or flooding, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's approval which shall not be unreasonably withheld. If Borrower fails to maintain coverage described above, Lender may, at Lender's option, obtain coverage in respect to Lender's rights in the Property in accordance with paragraph 7.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgage clause. Lender shall have the right to hold the policies and renewals. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. If Borrower abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Security Instrument, whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of the payments. If under paragraph 22 the Property is acquired by Lender, Borrower's right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Security Instrument immediately prior to the acquisition.

6. **Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate, or commit waste on the Property. Borrower shall be in default if any forfeiture action or proceeding, whether civil or criminal, is begun that in Lender's good faith judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Security Instrument or Lender's security interest. Borrower may cure such a default and reinstate, as provided in

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paragraph 18, by causing the action or proceeding to be dismissed with a ruling that, in Lender's good faith determination, precludes forfeiture of the Borrower's interest in the Property or other material impairment of the lien created by this Security Instrument or Lender's security interest. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

7. **Protection of Lender's Rights in the Property.** If Borrower fails to perform the covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien which has priority over this Security Instrument, appearing in court, paying reasonable attorneys' fees and entering on the Property to make repairs. Although Lender may take action under this paragraph 7, Lender does not have to do so.

Any amounts disbursed by Lender under this paragraph 7 shall become additional debt of Borrower secured by this Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

8. **Mortgage Insurance.** If the indebtedness secured hereby be guaranteed or insured under Title 38, United States Code, such Title Regulations issued thereunder and in effect on the date hereof shall govern the rights, duties, and liabilities of the parties hereto, and any provisions of this or other instruments executed in connection with said indebtedness which are inconsistent with said Title or Regulations are hereby amended to conform thereto.

9. **Inspection.** Lender or its agent may make reasonable entries upon and inspections of the Property. Lender shall give Borrower notice at the time of or prior to an inspection specifying reasonable cause for the inspection.

10. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the taking, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the proceeds multiplied by the following fractions: (a) the total amount of the sums secured immediately before the taking, divided by (b) the fair market value of the Property immediately before the taking. Any balance shall be paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is less than the amount of the sums secured immediately before the taking, unless Borrower and Lender otherwise agree in writing or unless applicable law otherwise provides, the proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds in principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of such payments.

11. **Borrower Not Released; Forbearance by Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successors in interest. Lender shall not be required to commence proceedings against any

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successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

12. **Successors and Assigns Bound; Joint and Several Liability; Co-signers.** The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 17. Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

13. **Loan Charges.** If the loan secured by this Security Instrument is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Note.

14. **Notice.** Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any other address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

15. **Governing Law; Severability.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

16. **Borrower's Copy.** Borrower shall be given one conformed copy of the Note and of this Security Instrument.

17. **Transfer of the Property or a Beneficial Interest in Borrower.** If all or any part of the Property or any interest in it is sold or transferred, this loan may be declared immediately due and payable upon transfer ("assumption") of the property securing such loan to any transferee ("assumer"), unless the acceptability of the assumption and transfer of this loan is established by the Department of Veterans Affairs or its authorized agent pursuant to Section 3714 of Chapter 37, Title 38, United States Code.

Regulations (38 C.F.R. Part 36) issued under the Department of Veterans Affairs ("V.A.") Guaranteed Loan Authority (38 U.S.C. Chapter 37) and in effect on the date of this loan closing shall govern the rights, duties and liabilities of the parties to this loan and any provisions of the Note and this Security Instrument which are inconsistent with such regulations are hereby amended and supplemented to conform thereto.

18. **Borrower's Right to Reinstate.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earlier of: (a) 5 days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Security Instrument; or (b) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees; and (d) takes such action as Lender may reasonably require to assure that the lien of this Security Instrument, Lender's rights in the Property and Borrower's obligation to pay the

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sums secured by this Security Instrument shall continue unchanged. Upon reinstatement by Borrower, this Security Instrument and the obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under paragraph 17.

19. **Sale of Note; Change of Loan Servicer.** The Note or a partial interest in the Note (together with this Security Instrument) may be sold one or more times without prior notice to Borrower. A sale may result in a change in the entity (known as the "Loan Servicer") that collects monthly payments due under the Note and this Security Instrument. There also may be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change in accordance with paragraph 14 above and applicable law. The notice will state the name and address of the new Loan Servicer and the address to which payments should be made. The notice will also contain any other information required by applicable law.

20. **Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply in the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 20, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 20, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

21. **Failure or Refusal of Loan Guaranty.** Should the Department of Veterans Affairs fail or refuse to issue its guaranty of the loan secured by this instrument under the provisions of the Servicemen's Readjustment Act of 1944, as amended, within sixty days from the date the loan would normally become eligible for such a guaranty, the mortgagee may, at its option, declare all sums secured hereby immediately due and payable.

**NON-UNIFORM COVENANTS.** Borrower and Lender further covenant and agree as follows:

22. **Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under paragraph 17 unless applicable law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 22, including, but not limited to, reasonable attorneys' fees.

If Lender invokes the power of sale, Lender shall cause a copy of a notice of sale to be served upon any person in possession of the Property. Lender shall publish a notice of sale, and the Property shall be sold at public auction in the manner prescribed by applicable law. Lender or its designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

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23. Release. Upon payment of all sums secured by this Security Instrument, Lender shall discharge this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

24. Waiver of Homestead. Borrower waives all right of homestead exemption in the Property.

25. Interest on Advances. The interest rate on advances made by Lender under paragraph 7 shall not exceed the maximum rate allowed by applicable law.

Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. (Check applicable box(es))

☐ Adjustable Rate Rider  
☐ Graduated Payment Rider  
☐ Balloon Rider  
☐ VA Rider

☐ Condominium Rider  
☐ Planned Unit Development Rider  
☐ Rate Improvement Rider  
☐ Other(s) (specify)

☐ 1-4 Family Rider  
☐ Biweekly Payment Rider  
☐ Second Home Rider

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Witnesses:

\_\_\_\_\_  
 Thomas M. Heber (Seal)  
 Thomas M. Heber - Borrower

\_\_\_\_\_  
 Jacqueline M. Heber (Seal)  
 Jacqueline M. Heber - Borrower

\_\_\_\_\_  
 \_\_\_\_\_ (Seal)  
 \_\_\_\_\_ - Borrower

\_\_\_\_\_  
 \_\_\_\_\_ (Seal)  
 \_\_\_\_\_ - Borrower

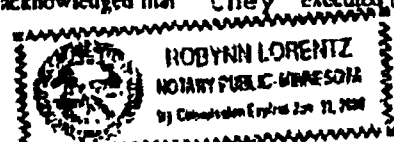
(Sign Below This Line For Acknowledgment)

STATE OF MINNESOTA,

Carver County ss:

On this 31st day of July 1998, before me appeared  
 Thomas M. Heber and Jacqueline M. Heber, husband and wife

to me personally known to be the person(s) described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.



My Commission expires:

\_\_\_\_\_  
 Robynn Lorentz - Notary Public

This instrument was prepared by Home Town Mtg., Inc., 207 Chestnut St  
 of Chaska, Minnesota 55318

MINNESOTA - Single Family - V.A. Security Instrument  
 Form 2824 1/98  
 Lender Form No. (800) 448-3468  
 LWT 04A2824 11/98

Page 7 of 7

11/26/2003 WED 11:56 [TX/RX NO 6777] 011

**V.A. FIXED RATE NOTE**

AUG 03 1998

**NOTICE: THIS LOAN IS NOT ASSUMABLE WITHOUT THE APPROVAL OF THE DEPARTMENT OF VETERANS AFFAIRS OR ITS AUTHORIZED AGENT**

July 31, 1998  
(Date)

Red Wing  
(City)

MN  
(State)

1503 West Maple Street, Red Wing, MN 55066  
(Property Address)

**1. BORROWER'S PROMISE TO PAY**

In return for a loan that I have received, I promise to pay U.S. \$ 94,860.00 (this amount is called "principal"), plus interest, to the order of the Lender. The Lender is Home Town Mortgage, Inc

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder".

**2. INTEREST**

Interest will be charged on unpaid principal until the full amount of principal has been paid. I will pay interest at a yearly rate of 7.500 %.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

**3. PAYMENTS****(A) Time and Place of Payments**

I will pay principal and interest by making payments every month.

I will make my monthly payments on the 1st day of each month beginning on September 1 1998. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. My monthly payments will be applied to interest before principal. If, on August 1, 2028, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "maturity date".

I will make my monthly payments at 207 Chestnut Street, Suite 210  
Chaska, MN 55318

or at a different place if required by the Note Holder.

**(B) Amount of Monthly Payments**

Each monthly payment of principal and interest will be in the amount of U.S. \$ 663.27. This amount will be part of a larger monthly payment required by the Security Instrument, that shall be applied to principal, interest and other items in the order described in the Security Instrument.

**4. BORROWER'S RIGHT TO PREPAY**

Privilege is reserved to prepay at any time without premium or fee, the entire indebtedness or any part thereof not less than the amount of one installment, or one hundred dollars (\$100.00), whichever is less. Prepayment in full shall be credited on the date received. Partial prepayment, other than on an installment due date, need not be credited until the next following installment due date or thirty days after such prepayment, whichever is earlier.

**5. LOAN CHARGES**

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (i) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (ii) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the principal I owe under this Note or by making a direct payment to me. If a refund reduces principal, the reduction will be treated as a partial prepayment.

**6. BORROWER'S FAILURE TO PAY AS REQUIRED****(A) Late Charge for Overdue Payments**

If the Note Holder has not received the full monthly payment required by the Security Instrument, as described in Section 3(B) of this Note, by the end of fifteen calendar days after the payment is due, the Note Holder may collect a late charge in the amount of Four point zero percent ( 4.000 %) of the overdue amount of each payment.

Multistate - V.A. Fixed Rate Note - Single Family - V.A. Uniform Instrument  
Form 2883 12/94  
Lender Forms Inc. (800) 448-2659  
LFI FVA2883 6/98

Page 1 of 2

Initials: Tut JMH

**(B) Default**

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

**(C) Notice of Default**

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is delivered or mailed to me.

**(D) No Waiver By Note Holder**

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

**(E) Payment of Note Holder's Costs and Expenses**

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

**7. GIVING OF NOTICES**

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

**8. OBLIGATIONS OF PERSONS UNDER THIS NOTE**

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

**9. WAIVERS**

I and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

**10. ALLONGE TO THIS NOTE**

If an allonge providing for payment adjustments or for any other supplemental information is executed by the Borrower together with this Note, the covenants of the allonge shall be incorporated into and shall amend and supplement the covenants of this Note as if the allonge were a part of this Note. [Check applicable box]

☐ Graduated Payment Allonge ☐ Other [Specify] ☐ Other [Specify]

**11. UNIFORM SECURED NOTE**

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

Transfer of the Property: If all or any part of the Property or any interest in it is sold or transferred, this loan may be declared immediately due and payable upon transfer ("assumption") of the property securing such loan to any transferee ("assumer"), unless the acceptability of the assumption and transfer of this loan is established by the Department of Veterans Affairs or its authorized agent pursuant to Section 3714 of Chapter 37, Title 38, United States code.

Regulations (38 C.F.R. Part 36) issued under the Department of Veterans Affairs ("V.A.") Guaranteed Loan Authority (38 U.S.C. Chapter 37) and in effect on the date of loan closing shall govern the rights, duties and liabilities of the parties to this loan and any provisions of the Security Instrument and this Note which are inconsistent with such regulations are hereby amended and supplemented to conform thereto.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

Thomas M. Heber (Seal)  
Thomas M. Heber  
Social Security Number 475-72-4588

Jacqueline M. Heber (Seal)  
Jacqueline M. Heber  
Social Security Number 482-90-9557

\_\_\_\_ (Seal)  
\_\_\_\_  
Social Security Number \_\_\_\_\_

\_\_\_\_ (Seal)  
\_\_\_\_  
Social Security Number \_\_\_\_\_

[Sign Original Only]

Multistate - V.A. Fixed Rate Note - Single Family - V.A. Uniform Instrument  
Form 2803 12/94  
Lender Form Inc. (900) 416-3945  
LFI 9VA2803 0/98 Page 2 of 2

which Mortgage is of record in Book, Volume, or Liber No. \_\_\_\_\_, at page \_\_\_\_\_  
 (or as No. \_\_\_\_\_) of the \_\_\_\_\_ Records of Goodhue  
 County, State of Minnesota, together with the note(s) and obligations therein described and the  
 money due and to become due thereon with interest, and all rights accrued or to accrue under such Mortgage.  
 TO HAVE AND TO HOLD the same unto Assignee, its successor and assigns, forever, subject only to the  
 terms and conditions of the above-described Mortgage.

IN WITNESS WHEREOF, the undersigned Assignor has executed this Assignment of Mortgage on  
 July 31, 1998

Home Town Mortgage, Inc.

Witness (Print Name) \_\_\_\_\_  
 Witness (Print Name) \_\_\_\_\_  
 Asset (Print Name) \_\_\_\_\_

By: \_\_\_\_\_

Michael J. Kielty  
 Vice President

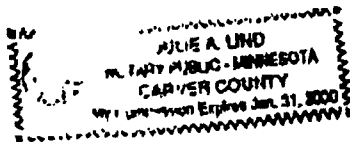
Seal:

(Space Below This Line Reserved For Acknowledgment)

STATE OF Minnesota  
 COUNTY OF Carver

On July 31, 1998 before me, the undersigned, a Notary Public in and for  
 said County and State, personally appeared Michael J. Kielty  
 known to me to be the Vice President  
 and \_\_\_\_\_ known to me to be  
 of the corporation herein which

executed the within instrument, that said instrument was signed and acknowledged on behalf of said corporation pursuant to its by-laws  
 or a resolution of its Board of Directors and that he/she acknowledges said instrument to be the free act and  
 deed of said corporation.



(THIS AREA FOR OFFICIAL  
 NOTARIAL SEAL)

Notary Public  
 My Commission Expires \_\_\_\_\_


Carver

County, MN

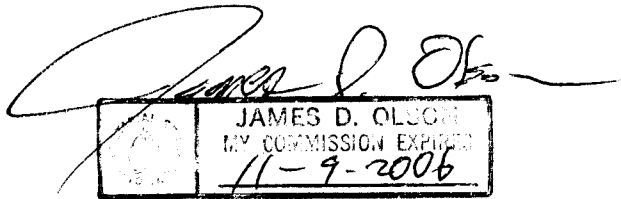
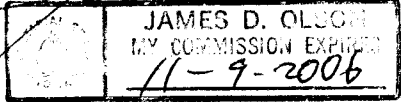
**Re: Thomas M. Heber and Jacqueline M. Heber  
Bankruptcy No. 03-37864-GFK**

**VERIFICATION**

I, Lindsey Schiltz of Principal Residential Mortgage, Inc., declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

  
BY: Lindsey Schiltz

APM/l dj#714239v1

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Case No. 03-37864-GFK

Chapter 13

Thomas M. Heber and Jacqueline M. Heber,

Debtor(s).

**MEMORANDUM IN SUPPORT OF  
MOTION FOR RELIEF FROM STAY**

---

Principal Residential Mortgage, Inc., and Mortgage Electronic Registration Systems Inc.,  
("Principal") submits this memorandum of law in support of its motion for relief from the stay in the  
above-entitled matter.

FACTS

Principal holds a valid, duly perfected mortgage on real property owned by Debtor(s).  
Presently, there is a post-petition delinquency under the terms of the note secured by the Mortgage with  
respect to monthly payments due for the months of July 2004, through Augusts 2004, in a total amount  
exceeding \$1,758.74 plus continuing late charges, interest and attorneys' cost and fees. The  
outstanding balance due Principal under the terms of the note is \$89,402.45, plus interest, late fees and  
attorneys' costs and fees.

ARGUMENT

Pursuant to Section 362(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be  
granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in  
property of such [creditor]." 11 U.S.C. § 362(d)(1). The Bankruptcy Code states that adequate  
protection may be provided by requiring cash payments from the trustee to the entity seeking relief, by

providing the entity seeking relief a replacement lien, or granting the entity seeking relief the indubitable equivalent of their interest. 11 U.S.C. § 361. Here, Debtor(s) failed to make the payments required by the note and mortgage for the months of July 2004, through August 2004, post petition. Because the validity of the mortgage has not been challenged, the default by the debtor has not been disputed, and the trustee has not opposed lifting the automatic stay, the default alone entitles Principal relief from the automatic stay. *See In re Elicker*, 100 B.R. 180, 183 (Bkrcty.M.D.Pa. 1989). Furthermore, there has been no attempt by Debtor(s) to otherwise provide Principal with adequate protection of its interest in the property. Such circumstances constitute cause, within the meaning of Section 362(d)(1), justifying relief from the stay.

Accordingly, Principal is entitled to an order terminating the stay and authorizing it to foreclose its mortgage on the property.

Dated: September 1, 2004

MACKALL, CROUNSE & MOORE, PLC

By/e/Andrew P. Moratzka

Andrew P. Moratzka

Attorney No. 0322131

Attorneys for Movant

1400 AT&T Tower

Minneapolis, MN 55402

Ph. (612) 305-1400

U.S. BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

Thomas M. Heber and Jacqueline M. Heber

Debtor(s)

UNSWORN DECLARATION  
FOR PROOF OF SERVICE

Bky. No. 03-37864-GFK

Amy J. Ditty, employed by Mackall, Crounse & Moore, with office address of 1400 AT&T Tower, 901 Marquette Avenue, Minneapolis, MN 55402-2859, declares that on the date set forth below, I served the annexed **Notice of Hearing and Motion for Relief from Stay, Memorandum in Support of Motion and proposed Order** upon each of the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Minneapolis, Minnesota addressed to each of them as follows:

-----  
United States Trustee  
1015 U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

(Trustee)  
Jasmine Keller  
12 south 6<sup>th</sup> Street  
Suite 310  
Minneapolis, MN 55402

(Debtor(s))  
Thomas M. Heber  
Jacqueline M. Heber  
1503 W. Maple Street  
Red Wing, MN 55066

(Attorney for Debtor(s))  
Richard Pearson  
P O Box 120088  
New Brighton, MN 55112

-----  
And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: September 1, 2004

Signed: /e/Amy J. Ditty

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Case No. 03-37864-GFK

Chapter 13

Thomas M. Heber and Jacqueline M. Heber,

Debtor(s).

**ORDER GRANTING  
MOTION FOR RELIEF FROM STAY**

---

The above-entitled matter came before the Court for hearing on September 20, 2004, at the motion of Principal Residential Mortgage, Inc., and Mortgage Electronic Registration Systems Inc., (“Principal”) seeking relief from the automatic stay of 11 U.S.C. §§ 362 of the Bankruptcy Code. Appearances were noted in the Court’s record. Based upon the proceedings had on said date, the statements of counsel, and all of the files and records herein, the Court now finds that cause exists entitling Principal to the relief requested.

NOW, THEREFORE, IT IS HEREBY ORDERED that the automatic stay of 11 U.S.C. § 362 of the Bankruptcy Code is immediately terminated and Principal Residential Mortgage, Inc. and Mortgage Electronic Registration Systems Inc., and/or its assignees and/or successors in interest, is hereby authorized to foreclose its mortgage on the following property:

The easterly 20 feet of Lot 18, and all of Lot 19, of Birchwood Village Addition, City of Red Wing, Goodhue County, State of Minnesota, according to the plat thereof on file and of record in the office of the County Recorder for said Goodhue and State.

Address: 1503 West Maple Street, Red Wing, Minnesota, 55066

Notwithstanding the Federal Rule of Bankruptcy Procedure 4001(a) (3) this order is effective immediately.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Gregory F. Kishel  
United States Bankruptcy Judge